IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6796 of 2004
with
SPECIAL CIVIL APPLICATION No. 6801 of 2004
And
SPECIAL CIVIL APPLICATION No. 6802 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

YASINBHAI JIVABHAI NEDARIA & Ors.

Versus

STATE OF GUJARAT & Ors.

Appearance:
1. Special Civil Application No. 6796 of 2004
MR VC VAGHELA for Petitioner No. 1
GOVERNMENT PLEADER for Respondent No. 1-2
MR HS MUNSHAW for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 06/07/2004

ORAL JUDGEMENT

Rule. Mr. Nagesh Sood, learned AGP waives service of Rule on behalf of respondents No. 1 and 2 and Mr. HS Munshaw, learned advocate waives service of Rule on behalf of respondent No.3. With the consent of parties, the matters are taken up for final hearing today.

2. In the present Special Civil Applications under Article 226/227 of the Constitution of India the petitioners have challenged the order passed by the appellate authority dated 10.6.2004 in dismissing the appeal and confirming the order passed by the District Development Officer Patan dated 12th February 2004 by which the concerned petitioners are removed as a Sarpanch/Member of the Kakoshi Gram Panchayat exercising power under Section 57 of the Gujarat Panchayat Act.

3. Shri VC Vaghela, learned advocate appearing on behalf of the petitioners has submitted that the order passed by the District Development Officer dated 12th February 2004 itself was against the principles of natural justice and the same has been passed without giving adequate opportunity of being heard to the petitioners. He has submitted that on 1st January 2004 they have requested for supplying the documents for which hearing was fixed on 5th January 2004. On 5th January as D.D.O., Patan was not present the matter was adjourned to 22nd January 2004. It is the case of petitioner that on 22nd January 2004 as it was not possible for hearing of the matter he was told by the Chitnis to give an application for adjournment and accordingly the matter was adjourned to 9th February 2004. On 9th February 2004 the learned advocate appearing for the petitioners could not remain present, however the petitioners were present and they were directed to proceed further with the matter. They could not represent their case as their learned advocate was not present on 9th February 2004 and ultimately the impugned orders dated 12th February 2004 are passed. An affidavit-in-reply has been filed on behalf of the D.D.O., Patan, pointing out that in fact the documents which were supplied were already given to the learned advocate appearing for the petitioners on 5th February 2004 itself. Therefore the contention that the petitioners were not given relevant documents is not correct. Learned advocate, Shri Munshaw, has submitted that the matter was kept on 9th February 2004, however the learned advocate appearing for the petitioner could not remain present and therefore the authority was justified in proceeding further with the matter ex parte.

4. Heard the learned advocates appearing for the parties. Hearing of the case was fixed by the District Development Officer on 5th January 2004. On that date the documents which were asked for by the petitioners were not given. Even from the Rojkam which is produced along with the affidavit-in-reply, it is clear that on 5th January 2004 the matter was adjourned to 22nd January 2004 because of unavoidable circumstances. Therefore, it cannot be said that the matter was adjourned to 22nd January 2004 at the instance of the petitioners and they sought for time on 22nd January 2004. It seems that it was not possible to hear the matter and therefore the matter was adjourned to 9th February 2004. Therefore, it was only on one day, i.e., 9th February 2004 the learned advocate appearing for the petitioners could not remain present. Considering the facts and circumstances and the allegations with regard to malafide levelled, as such the District Development Officer ought to have given one additional opportunity to the petitioners which was not given and the orders are passed on 9th February 2004. Without going into the merits of the case, only on the ground that the petitioners were not given sufficient opportunity to represent their case, the impugned orders passed by the D.D.O., Patan, and which were confirmed by the Additional Development Commissioner are required to be quashed and set aside. The matter is remanded to the District Development Officer, Patan to decide and dispose of the same in accordance with law after affording opportunity of hearing to the petitioners. It is clarified as agreed by the petitioners that till the District Development Officer decides the matter afresh, the petitioners would not hold the charge either as a Sarpanch and/or Member of the concerned Gram Panchayat. Such an exercise is required to be done and appropriate orders are required to be passed on or before 31st July 2004 as suggested by Mr. Munshaw. Rule is accordingly made absolute in all the matters. Direct service is permitted.

[M.R. Shah, J.]

rmr.